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No. 06-977

IN THE SUPREME COURT OF THE UNITED STATES

HUGH WOLFENBARGER, Warden,

Petitioner

-v-

WYNN SATTERLEE,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SIXTH CIRCUIT COURT OF APPEALS

JAMES STERLING LAWRENCE (P33664)
Attorney for Respondent Satterlee
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Royal Oak, MI 48067
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QUESTIONS PRESENTED

Respondent Wynn Satterlee filed a Petition for Habeas Corpus in United States District Court claiming ineffective assistance of counsel arising from counsel's peculiar actions, failures to inform, and outright misinformation. The United States District Court ordered Habeas Corpus relief, that Michigan, within 60 days, extend an offer to Petitioner to plead guilty to a lesser offense with a 6 to 20 year sentence. The state failed to do that, leading to a District Court order releasing Petitioner. The questions presented are:

QUESTION 1: WHETHER THE UNITED STATES DISTRICT COURT HAS THE AUTHORITY TO ISSUE A CONDITIONAL ORDER OF HABEAS CORPUS, PROVIDING FOR ENHANCED REMEDY TO THE PRISONER IF THE STATE FAILS TO OBEY THE CONDITIONAL ORDER.

QUESTION 2: WHETHER THE REMEDY APPLIED BY THE UNITED STATES DISTRICT COURT USURPS THE AUTHORITY OF THE MICHIGAN PAROLE BOARD OR IS OTHERWISE CONTRARY TO RESPECT OWED TO THE STATE COURTS.

QUESTION 3: WHETHER THE RELEASE OF RESPONDENT ON BOND WAS ITSELF IMPROPER, OR MADE ANY OTHER RULINGS IMPROPER.

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BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI
TO THE SIXTH CIRCUIT COURT OF APPEALS

WYNN SATTERLEE, Respondent, by and through his attorney, James S. Lawrence, moves this Court to deny a Writ of Certiorari to review the ruling of the Sixth Circuit Court of Appeals of June 30, 2006, affirming the grant of Habeas Corpus by the United States District Court.

OPINIONS BELOW

These are found in Petitioner's Appendix.

STATEMENT OF JURISDICTION.

This case began as a criminal prosecution in Ingham County, Michigan, Circuit Court. The original judgment was entered January 13, 1999. The United States District Court issued a ruling granting Habeas Corpus relief on June 23, 2005. The United States Court of Appeals for the Sixth Circuit affirmed June 30, 2006. Respondent concedes that this Court has jurisdiction over the Petition for Writ of Certiorari pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

The Fourteenth Amendment to the United States Constitution provides:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTE INVOLVED

28 U.S.C. § 2243 provides, in part:

> "The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require."

STATEMENT OF THE CASE

Statement of Proceedings

Respondent Wynn Satterlee (Petitioner in United States District Court) was charged with, and ultimately convicted of, conspiracy to possess with intent to deliver over 650 grams of cocaine. Trial took place in the Ingham County, Michigan Circuit Court before the Hon. William Collette. On January 13, 1999, Judge Collette sentenced Defendant to prison for 20 to 30 years, noting that Defendant had no prior convictions.

Trial counsel David Dodge handled the appeal of right. The Court of Appeals affirmed on March 28, 2000. The Michigan Supreme Court denied leave to appeal on June 26, 2000. A Motion for Relief from Judgment was denied by the

Circuit Court on July 24, 2001. The Court of Appeals denied leave to appeal November 4, 2002. The Michigan Supreme Court denied leave to appeal April 29, 2003.

Respondent filed a Petition for Habeas Corpus with the United States District Court, Eastern District of Michigan, on April 30, 2003. An evidentiary hearing was held before the Hon. Arthur Tarnow on June 1, 2005. Judge Tarnow granted a Petition for Habeas Corpus on June 23, 2005. The ruling included this language:

> "IT IS HEREBY ORDERED THAT PETITIONER'S APPLICATION FOR WRIT OF HABEAS CORPUS IS CONDITIONALLY GRANTED. UNLESS THE STATE TAKES ACTION TO OFFER PETITIONER A PLEA OFFER WITH A SENTENCE AGREEMENT OF SIX TO TWENTY YEARS WITHIN SIXTY (60) DAYS OF THE DATE OF THIS OPINION, HE MAY APPLY FOR A WRIT ORDERING RESPONDENT TO RELEASE HIM FROM CUSTODY FORTHWITH."

Petitioner, Warden Wolfenbarger (Respondent in the District Court), moved for reconsideration July 5, 2005, and it was denied by order dated July 14, 2005. Sixty days from July 14, 2005 was September 12, 2005. Petitioner did not extend the offer to Respondent Satterlee. The Motion to Issue Unconditional Writ of Habeas Corpus was filed September 23, 2005, 11 days after the State's time to make the offer expired. This was granted by the United States District Court on November 19, 2005.

Meanwhile, on July 8, 2005, the District Court held a

hearing and release Respondent (Petitioner in District Court) on personal bond, under the supervision of Pretrial Services of the United States District Court, pending the prosecutor's appeal.

Petitioner Warden Wolfenbarger filed 2 timely appeals which were consolidated, leading to a published opinion of June 30, 2006, affirming the District Court.

Statement of Facts

Facts Elicited at Trial:

Randall Guile testified that he was arrested in Holt, Michigan, for attempting to deliver 20 ounces of cocaine, and possessing 2 more ounces of cocaine. A search of his home located another 810 grams of cocaine. He made a plea bargain for a lower sentence in exchange for testimony against Respondent Wynn Satterlee. (T I, 82-92).

Mr. Guile testified that in December 1995, he and Respondent went to Florida and brought back 2 kilos of cocaine to Michigan. (T I, 49-51). He testified that he and Respondent went to Florida again, where Respondent came up with more cocaine. This was driven back to Michigan in Guile's motor home, being driven by Robert Horstman and D.W. Respondent told him that the cocaine had come from Curt Liebetrau. (T I, 53-62).

Facts Elicited at Evidentiary Hearing:

Mr. Dodge testified that he was authorized by Respondent Satterlee to offer a deal of 1 to 20 years. (T 15). Mr. Cipriani, the prosecutor, said he never heard any such offer [although he would have rejected it if it had been

presented to him]. (T 79-80, 83, 89). Prosecutor Cipriani says he was told by Mr. Dodge that Respondent would not take any deal involving prison (T 79-80, 83), which both attorney Dodge (T 15) and Respondent Satterlee (T 110) agreed was not Respondent's position.

Mr. Dodge declared authentic his letter dated November 30, 1998, where he allegedly presented to Respondent the offer of Mr. Cipriani of a sentence from 3 to 7 years. (T 19-20). Mr. Cipriani says he never made such an offer. He testified that before trial, the best offer he made was 7 to 20, and it was not until the day of trial that he went below 7, by offering 6 to 20. (T 72-75).

In other words, Mr. Cipriani never heard of Respondent Satterlee's offer, Mr. Satterlee never heard of Mr. Cipriani's offer, and the November 30 letter, purportedly addressed to Respondent on Timber Ridge Rd., purports to present to Respondent Satterlee a supposed plea offer that Mr. Cipriani never made.

Mr. Satterlee says he did not live at the Timber Ridge address, that he moved earlier that year to Pole Road, and that he notified attorney Dodge of the change of address. (T 98). This is confirmed in part by Exhibit 4, the letter from attorney Bengston to attorney Dodge providing advice on how to deal with Respondent's change of address. (T 16-17).

Mr. Satterlee (T 97-100) and his mother (T 111) each confirm that the supposed November 30 letter never arrived. Mr. Dodge conceded that he did not know if the letter had been mailed or if it had been faxed, and that the FAX designation on the letter suggests it might have been faxed. (T 22-23, 63-64). Mr. Satterlee had no fax machine to

receive a fax. (T 109).

Mr. Dodge testified that between sending the November 30 letter and the date of trial, he did not consult with Respondent Satterlee at all about possible plea bargaining. (T 23, 27).

Mr. Satterlee testified that he asked attorney Dodge about the status of plea bargaining in a phone call on December 4, the Friday before the December 7 trial date, and Mr. Dodge informed him that all offers were off the table. (T 100).

Mr. Satterlee testified that he cooperated extensively with the authorities, and his purpose in doing so was to get the best deal possible. (T 91, 94-95, 101-102, 110). That he cooperated is shown by the testimony of both Mr. Cipriani (T 70-71) and Mr. Dodge (T 11-12), and by Exhibit 1, which showed he admitted guilt and named others who participated. That his purpose in doing so was to get the best deal possible is supported in part by the testimony of Mr. Dodge (T 12), and fully supported by his own testimony. Confessing and naming others involved in drug trafficking does not provide a trial defense to the charges, and would in fact hinder Respondent from testifying at his own trial (T 31).

Respondent testified that he proposed 1 to 20 as a starting point for the defense negotiations (T 109-110), and attorney Dodge agreed that Respondent authorized him to make that offer. (T 15). That offer, if accepted by the prosecutor, would involve Respondent going to prison. Mr. Cipriani testified he was informed by attorney Dodge that Respondent insisted only on deals that would not involve prison. (T 79-80, 83).

Attorney Dodge did not inform Respondent of the 6 to 20 offer. (T 101). If Respondent had known of the 7 to 20 and 6 to 20 offers, which did not involve him publicly giving testimony or working as an undercover agent, he clearly would have accepted. (T 102).

The testimony showed that if the case went to trial, rather than being resolved by plea, attorney Dodge would personally receive an additional $25,000.00, making $50,000.00 total. (T 34).

Attorney Dodge admitted that he did not advise Respondent or his family of any possible conflict of interest from his handling the appeal from his own representation, and that he did not consider raising, or raise, an issue of ineffective assistance of trial counsel against himself. (T 35-38).

Margaret Satterlee testified that attorney Dodge solicited the appeal, and he provided the family with no information that there might be a possible conflict of interest. (T 111-113).

Judge Tarnow, after holding an evidentiary hearing, on June 23, 2005 issued a ruling granting Habeas Corpus. He found that Respondent, his mother, and prosecutor Cipriani were all more credible than attorney Dodge, and made the following findings of fact (Opinion 13-16):

> "This Court first finds that the petitioner has established by clear and convincing evidence that the prosecutor made a plea offer on the day of trial to allow petitioner to plead guilty in exchange for a sentence of six to twenty years. Mr. Cipriani, the assistant prosecutor in this case,

acknowledged that such a plea offer was made, and this fact has not been disputed by respondent.

Secondly, this Court finds that the plea offer of six to twenty years was never communicated to petitioner by his attorney David Dodge. In so ruling, this Court is finding that petitioner's testimony that no such offer was ever conveyed to him prior to trial to be more credible than Mr. Dodge's testimony. Although Mr. Dodge claimed that it would be his practice to communicate all plea offers to a client, Mr. Dodge was unable to recall whether a plea offer was made on the day of trial or whether he discussed such an offer with petitioner.

More importantly, in all aspects, this Court finds petitioner's testimony, the testimony of his mother, and that of assistant prosecutor John Cipriani, to be more credible than Mr. Dodge's testimony on a number of matters. It is the province of the district court before which a habeas corpus proceeding is taking place to make credibility determinations. *See Stidham v. Wingo,* 482 F. 2d 817, 820 (6th Cir. 1973).

Mr. Dodge had difficulty remembering most of the details of this case. This Court finds it hard to believe that an attorney would be unable to recall even the most basic details from a case in which he received a fee in excess of $ 50,000.00. In addition, although Mr. Dodge claimed that he was only authorized by petitioner to accept a plea offer of one to twenty years, Mr. Cipriani claimed that he never heard petitioner offer to plead guilty in exchange for a sentence of one to twenty years.

Further, petitioner and his mother both testified that the letter from November 30, 1998 which contained a reference to the plea offer of

seven to twenty years, was never mailed or faxed to them at any address. Dodge conceded that he did not know if this letter had been mailed or sent by fax machine to petitioner. Dodge also could not recall having any discussions with petitioner concerning any plea offers between the date that he sent this letter on November 30, 1998 and the trial date of December 7, 1998. This diminishes the credibility of Dodge's testimony that it would be his practice to communicate all plea offers to his clients. If this were the case, the Court questions why Dodge would have made no attempts to contact petitioner by telephone or other means prior to trial to determine whether petitioner was aware of the plea offer of seven to twenty years and whether it would be desirable for him to accept it. Finally, Dodge's testimony that any plea offers which went below a minimum sentence of seven years were conditioned upon petitioner providing additional cooperation to the authorities was refuted by John Cipriani's testimony that the offer of six to twenty years was not conditioned upon petitioner providing any additional assistance to the authorities.

Another factor which casts doubt on Dodge's credibility and enhances petitioner's credibility concerning whether the plea agreement of six to twenty years was actually communicated to petitioner is the fee arrangement, which called for Dodge to receive an additional $ 25,000.00 if the case went to trial, as opposed if petitioner pleaded guilty. The fee arrangement created a disincentive for Dodge to seek a plea agreement, further calling into question both his credibility at the evidentiary hearing and the effectiveness of his representation in this case. *See e.g. Winkler v.*

Keane, 7 F. 3d 304, 307-08 (2nd Cir. 1993)(contingency fee agreement, under which defense counsel was to receive additional $ 25,000 if defendant were acquitted or otherwise not found guilty, created an actual conflict of interest in murder prosecution. That is, defense counsel had a disincentive to seek a plea agreement, or to put forth mitigating defenses that would result in a conviction of a lesser included offense).

Moreover, petitioner clearly established that he sought to plead guilty from the time of his arrest. He was not interested in going to trial. Petitioner testified that he cooperated with law enforcement officials from the start in order to obtain the most advantageous plea agreement. Petitioner, in fact, testified that he retained Dodge, because of the attorney's reputation in obtaining favorable plea or sentencing agreements for his clients.

Finally, petitioner received a sentence of twenty to thirty years after trial. Clearly, the large disparity between this sentence and a sentence of six to twenty years supports a finding that there is a reasonable probability that petitioner would have accepted the plea offer that was made in this case. *Griffin, supra* at 737. See also, *United States v. Blaylock*, 20 F.3d 1458, at 1468 (9th Cir.1994)."

REASONS FOR DENYING THE WRIT

QUESTION 1: WHETHER THE UNITED STATES DISTRICT COURT HAS THE AUTHORITY TO ISSUE A CONDITIONAL ORDER OF HABEAS CORPUS,

PROVIDING FOR ENHANCED REMEDY TO THE PRISONER IF THE STATE FAILS TO OBEY THE CONDITIONAL ORDER.

Respondent Satterlee filed a Petition for Habeas Corpus in United States District Court challenging his conviction and sentence. [1] It was granted, and that was upheld on appeal.

At the outset, it must be noted that Petitioner (Warden Wolfenbarger) in this petition challenges only the extent of the remedy. He does not challenge the federal court finding that attorney Dodge did not inform Respondent Satterlee (defendant in state court) of plea offers extended by the prosecutor, Mr. Cipriani, and did not inform Mr. Cipriani of the plea offer extended by Respondent Satterlee. Petitioner Warden does not challenge the federal court finding that attorney Dodge had a $25,000 incentive to take actions which guaranteed there would be no plea bargain and that the case would go to trial. Petitioner Warden does not challenge the federal court finding that attorney Dodge gave testimony it found not to be credible based on testimony from state prosecutor Cipriani, after holding an evidentiary hearing. Petitioner also does not challenge the legal conclusion

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[1] Petitioner, Warden Wolfenbarger, is simply incorrect when he argued that Respondent challenged only the sentence. (P.W.C. 8). Respondent was convicted at trial of conspiracy to possess with intent to deliver over 650 grams of cocaine, and 20 to 30 years was the lowest sentence available for that offense. Respondent argued that he was wrongfully deprived of an opportunity to accept a plea bargain to a lower charge involving a 6 to 20 year offer.

reached by the United States District Court and the Sixth Circuit Court of Appeals that these actions amounted to ineffective assistance of counsel by attorney Dodge, justifying Habeas Corpus relief.

In issuing its Opinion and Order Conditionally Granting the Petition for Writ of Habeas Corpus, the District Court stated:

> "It is hereby ordered that petitioner's application for writ of habeas corpus is conditionally granted. Unless the state takes action to offer petitioner a plea offer with a sentence agreement of six to twenty years within sixty (60) days of the date of this opinion, he may apply for a writ ordering respondent to release him from custody forthwith."

A conditional writ of Habeas Corpus is completely proper. In *Hodge v. Hurley*, 426 F.3d 268 (6th Cir. 2005), the Sixth Circuit ordered:

> "Accordingly, we REVERSE the decision below and REMAND the case to the district court with instructions that a conditional writ of habeas corpus, giving the State of Ohio ninety days to retry Hodge or release him from custody, be GRANTED."

Similarly, in *Clinkscale v. Carter*, 375 F.3d 430 (6th Cir. 2004), the Sixth Circuit ordered:

> "For all the foregoing reasons, we REVERSE the district court's judgment and

> GRANT a conditional writ of habeas corpus, giving the State of Ohio ninety days in which to retry Clinkscale or release him from state custody."

This principle was recognized in *Wilkinson v. Dotson*, 544 U.S. 74, 86; 125 S.Ct. 1242; 161 L.Ed.2d 253 (2005) [concurrence of Justices Scalia and Thomas]:

> "Conditional writs enable habeas courts to give States time to replace an invalid judgment with a valid one, and the consequence when they fail to do so is always release."

Conditional writs of Habeas Corpus were affirmed by the United States Supreme Court in *Kimmelman v. Morrison*, 477 U.S. 365; 106 S.Ct. 2574 (1986) and *Evitts v. Lucey*, 469 U.S. 387; 105 S.Ct. 830 (1985). In other cases, the United States Supreme Court has overturned conditional writs, but only on the merits, not on the basis that District Courts lack the authority to impose that remedy. See, e.g., *Bell v. Cone*, 535 U.S. 685; 122 S.Ct. 1843; 152 L.Ed.2d 514 (2002); *Edwards v. Carpenter*, 529 U.S. 446; 120 S.Ct. 1587; 146 L.Ed.2d 518 (2000).

That a federal court can issue a conditional writ is therefore beyond question.

The grant of conditional Habeas Corpus instead of full Habeas Corpus is a concession to the State, permitting them to remedy their unconstitutional actions instead of just releasing the unconstitutionally convicted petitioner. If the conditional part of the Habeas Corpus order cannot be enforced, then Habeas Corpus courts should stop issuing

conditional orders, and just issue final orders, not giving the state the opportunity to cure. It is hard to believe that is what the State would want, yet, that would necessarily be the result if the conditional part of the Habeas Corpus order could not be enforced.

This Court should deny Certiorari because the only result of such a procedure would be a conventional ruling upholding the well-established rule that a United States District Court has the power and authority to issue a conditional writ of Habeas Corpus with consequences attendant on failure to comply.

QUESTION 2: WHETHER THE REMEDY APPLIED BY THE UNITED STATES DISTRICT COURT USURPS THE AUTHORITY OF THE MICHIGAN PAROLE BOARD OR IS OTHERWISE CONTRARY TO RESPECT OWED TO THE STATE COURTS.

If the District Court issues a conditional order, and the State fails to comply, the District Court is not supposed to ignore that violation. Instead, the District Court is supposed to impose a remedy. That remedy can include release of the prisoner. *Wilkinson v. Dotson*, supra.

The remedy, however, is not limited to release of the prisoner, and can include overturning or expunging the conviction. *Carafas v. LaVallee*, 391 U.S. 234 (1968); *A.M. v. Butler*, 360 F.3d 787, 802 (7th Cir. 2004); *White v. White*, 925 F.2d 287 (9th Cir., 1991); *Mizell v. Attorney General*, 586 F.2d 942 (2d Cir. 1978).

Petitioner Warden argues that even though they violated the terms of the conditional writ of Habeas Corpus,

the prisoner should get no more remedy than if the State had complied with the terms of the conditional writ.

If this Court were to issue such a ruling, then the power of federal courts, and the rights of individuals depending on those federal courts, would depend on the policies of officials in the states. In many states, few conditional writs of Habeas Corpus would ever be complied with because state officials would know that the conditional writ contains an empty threat, and states could do whatever they wanted without fear of a final writ. It must be remembered that the very purpose of the Habeas Corpus remedy is to force the states into doing things that their own officials refused to do.

If the federal courts do not have the authority to issue conditional orders of Habeas Corpus with consequences associated with the failure to comply, then the federal court orders would be mere suggestions, not orders.

Under Petitioner Warden's theory, after receiving the ruling in *Hodge v. Hurley*, supra, the State of Ohio could have refused to retry Hodge within the 90 days, and if Hodge were then to be set free by the federal court, the State could then argue "If we had given him the new trial, he would have had to face a jury, so the federal court is usurping the function of the jury."

The Habeas Corpus judgment was issued June 23, 2005. The State moved for reconsideration July 5, 2005, and it was denied by order dated July 14, 2005. Sixty days from July 14, 2005 was September 12, 2005. The Motion to Issue Unconditional Writ of Habeas Corpus was filed September 23, 2005, 11 days after the State's time to make the offer

expired. [2]

The State could have avoided the final writ of Habeas Corpus and the attendant consequences they don't like, by complying with the United States District Court order, and offering Respondent Satterlee the 6 to 20 year bargain within 60 days. It was their choice not to make the offer, not Respondent's. If they wanted Respondent to have the 6 to 20 and face the Parole Board, nothing would have been easier. All they had to do is comply with the court's order. It is their own default that turned Respondent's original remedy into an even better remedy.

Another thing they could have done, within the 60 days, is to seek a stay of proceedings from the District Court, and if that failed, from the Court of Appeals. They didn't do that either. They go around violating court orders, and not taking available steps to relieve themselves from the orders, in the hope that some appellate court will bail them out.

The lesson that the State should learn here is that federal court orders should be obeyed, or stays of proceedings sought. The District Court was clear that the failure of the State to take action within the 60 days would lead to a final writ of Habeas Corpus being issued on behalf of Respondent Satterlee. The State unquestionably had notice. The question is whether the State can void the orders of the United States District Court by the simple expedient of not following them. We submit they clearly cannot.

There is no automatic stay. F.R.Civ.P. 62 covers Stay of Proceedings to Enforce a Judgment. It places on the

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[2] Sixty days after the original judgment would be August 22.

appellant the responsibility of seeking a stay, and requires the approval of the United States District Judge. F.R.Civ.P. 62(d). See also *Javitch v. First Union Securities*, 315 F.3d 619 (6th Cir. 2003); *Steele v. Industrial Development Board*, 301 F.3d 401 (6th Cir. 2002); *Lorillard Tobacco Co v. Reilly*, 533 U.S. 525; 121 S.Ct. 2404; 150 L.Ed.2d 532 (2001); *Weingarten Nostat Inc. v. Service Merchandise Co Inc.*, 396 F.3d 737 (6th Cir. 2005); *Hamby v. Neal*, 368 F.3d 549 (6th Cir. 2004); *Baker v. Adams County Ohio Valley School Board*, 310 F.3d 927 (6th Cir. 2002); *Grutter v. Bollinger*, 247 F.3d 631 (6th Cir. 2001), involving granting or denying motions for stays of the District Court judgment.

No stay was applied for, and none was issued, while their 60 days was running. In other words, the State allowed the 60 days to lapse, and 11 more days as well.

Petitioner, Warden Wolfenbarger, explains the failures as follows (P.W.C. 6):

> "Because Satterlee had already been effectively paroled by the District Court, and because the case was pending on appeal, the State did not disturb the status quo."

We submit this explanation is ludicrously inadequate. The United States District Court order requiring action within 60 days contained no provision that the order did not apply if the United States District Court released Respondent on bond pending the State's appeal.

Moreover, the proper way to maintain the status quo is to move for a stay, something they failed to do.

Moreover, when a conditional writ of Habeas Corpus is

entered, the action of a state in ignoring the order could not possibly result in a continuation of the status quo, something that the attorneys for Petitioner knew, or should have known. The status quo could be maintained in such a situation only if the courts allow the State to decide which court orders it will choose to obey, and excuse them from obeying the orders they do not like.

The explanation that the release on bond of Respondent Satterlee amounted to being "effectively paroled" makes no sense, because Satterlee was not placed on parole. The release on bond did not involve any Parole Board supervision. It was a temporary measure that would have had effect only until Petitioner offered the plea bargain and Mr. Satterlee accepted it, or until the appeals on the matter had expired.

Hilton v. Braunskill, 107 S.Ct. 2113; 95 L.Ed.2d 724 (1987), holds that there is a presumption favoring release on bond once a ruling is issued granting Habeas Corpus. The State's argument that release on bond amounts to an unlawful parole cannot be squared with the ruling in *Hilton* that there is a presumption that release on bond will be granted pending the State's appeal of the grant of Habeas Corpus.

If it is true that "Conditional writs enable habeas courts to give States time to replace an invalid judgment with a valid one, and the consequence when they fail to do so is always release," *Wilkinson v. Dotson*, supra, then, under the State's theory, every time Habeas Corpus is granted, the federal courts are unlawfully interfering with state parole boards. The State's argument is therefore unreasonable.

Even if the action of the United States District Court in

releasing Mr. Satterlee somehow were to be found to amount to a parole, there is no "grant of parole" exception to United States District Court orders.

In short, if Respondent wanted Petitioner to face the Parole Board, they had an easy way to accomplish that. The only reason it was not accomplished by them was their own procedural default. A federal court order that directs action by a party, and which directs that further consequences will attend if the party does not comply, would be worthless if the party does not comply yet is freed from the further consequences.

As the Sixth Circuit ruled in this case:

> "Put in general terms, the state contends the following: (1) the law say you must do A, or else sanction B will be imposed; (2) even if it is undisputed that you failed to do A, you can avoid sanction B *simply by pointing out that if you had done A after all, then sanction B would not have been imposed.* We think it apparent that this argument is illogical and merits no further discussion."

This Court should therefore deny Certiorari, for the only outcome of such a procedure would be a conventional ruling upholding the well-established rule that if a federal court issues a conditional writ of Habeas Corpus ordering that the State must take action within a certain period of time or a final writ of Habeas Corpus will be issued, and if the State allows that period to expire without either complying with the order or acquiring a stay of proceedings, then the final writ of Habeas Corpus will be issued.

QUESTION 3: WHETHER THE RELEASE OF RESPONDENT ON BOND WAS ITSELF IMPROPER, OR MADE ANY OTHER RULINGS IMPROPER

Hilton v. Braunskill, 107 S.Ct. 2113; 95 L.Ed.2d 724 (1987), holds that there is a presumption favoring release on bond once a ruling is issued granting Habeas Corpus.

The State argues (P.W.C. 6): "The District Court released Respondent over a month prior to the deadline imposed for the State to offer the plea bargain to Petitioner."

We submit that the State could have obeyed the conditional writ of Habeas Corpus whether Mr. Satterlee was in a prison cell or released on bond and staying at his mother's house. Counsel for the State had the address and phone number of Mr. Satterlee's attorney (undersigned counsel), and Pretrial Services of the United States District Court had Mr. Satterlee's home address and phone number.

When the Michigan Attorney General's office received the conditional writ of Habeas Corpus, it was their duty to inform the Ingham County Prosecutor that action needed to be taken within 60 days. Petitioner Warden does not assert that any such contacting or informing was done.

The physical location of Mr. Satterlee at the time that the State's 60 days expired is entirely irrelevant to the State's ability to offer him the 6 to 20 plea bargain, unless the State claims that they tried to make the offer, but could not find him. However, they have made no such claim in this Court or any lower court. Indeed, they admit that the reason they did not comply with the order to make the offer was that they

concluded that the release on bond amounted to a "parole." Implicit in their argument is that if the District Court order were a parole, the phrase "sixty days" would somehow take on some other meaning. The fact that the attorneys at the Attorney General's office so seriously misunderstood the legal effect of a release on bond is not a legitimate excuse for disobeying court orders.

If they had made the offer, Mr. Satterlee of course would have accepted it (the alternative being to go back to prison for 20 to 30 years). He would have been sentenced to prison, then would have reasonably promptly faced the Parole Board, the minimum of 6 years already having been served. The District Court order of release on bond would not have prevented the state court from sentencing Petitioner to 6 to 20, nor would it have prevented the Parole Board from paroling or refusing to parole.

The State could have petitioned the District Court to amend or revoke bond at any time during these proceedings, citing changed circumstances. Whether Mr. Satterlee remained on bond from the federal court or not, the power of the state government to proceed with the offer, the plea, the sentencing, and the parole consideration would be unaffected.

The State cites no case, from the United States Supreme Court or elsewhere, that release on bond amounts to parole, or that release on bond terminates a Habeas Corpus case, or that release on bond excuses a party to a Habeas Corpus action from obeying orders of the United States District Court.

The State essentially took a risk, gambling all on the

hope that the original ruling granting Habeas Corpus would be reversed, and Respondent would be forced into returning to prison for 20 to 30 years. The outcome here was a direct result of their litigation tactics.

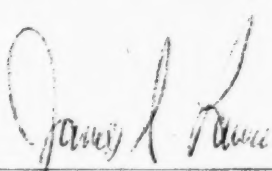
Petitioner Warden should not receive a benefit from the failure to proceed with the plea bargain ordered by the ruling of the United States District Court. If a party fails to comply with the conditions set forth in a conditional federal court order, that party cannot legitimately complain when the federal court moves forward to a final order, granting relief well recognized as within the power of a federal court in rulings of the United States Supreme Court and United States Courts of Appeals.

This Court should deny Certiorari because the only result of such a proceeding would be a conventional ruling upholding the well-established rule that the merits of the Habeas Corpus ruling and the merits of release on bond pending the State's appeal are two different questions, and release on bond does not affect the duties of parties to otherwise obey court orders.

CONCLUSION

Respondent Wynn Satterlee respectfully submits that for the reasons stated above, the Sixth Circuit ruling was correct despite Petitioner's novel arguments. This Court should deny Certiorari and allow the Sixth Circuit ruling to stand.

Respectfully submitted,



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